SINGLE BENCH

IN THEE HIGH COURT OF JUDICATUERE AT BILASPUR (C.G.)

W.P. NO. 4398 /2005

PETITIONER : Jeevan Lal Mannewar, s/o- Baigaram, aged about 30 years, Elected Surpanch, R/o- Village - Amlideeh, Tehsil- Kartala, District Korba (C.G.)

VERSUS

RESPONDENTS

1. Baharatu Kanwar, S/o- Garhan Singh, aged about 50 years, R/o- Village- Navapara, Tehsil- Kartala, District- Korba (C.G.)
2. Ram Singh Kanwar, S/o- Bhagau, aged about 45 years, R/o- Village- Amlideeh, Tehsil- Kartala, District Korba (C.G.)
3. Election Officer (Panchayat), Block- Kartala, District Korba (C.G.)
4. The Sub Divisional Officer, Korba, District- Korba (C.G.)
5. The Patwari, P.H. No. 16,Tehsil- Kartala, District Korba (C.G.)

P.R. No. 1133/05 Presented by Shri S.K. Sahu dated 12/12/05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

मामला क्रमांक ..... W.P. 4398/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	16-9-2005 Heard Mr. Ravish Verma, counsel for the petitioner, on admission. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality, propriety and correctness of order dated 12-7-2005 (Annexure P-1) passed by the Sub Divisional Officer, Korba (Specified Officer), whereby the petitioner herein, who was the elected Sarpanch of Village Panchayat: Amlideeh, has been declared disqualified on the ground that the post of Sarpanch of Village Panchayat: Amlideeh was reserved for ST category, whereas, the petitioner herein belongs to SC category. Therefore, the petitioner has been declared disqualified to hold the post of Sarpanch of Village Panchayat: Amlideeh. The order impugned is prima facie illegal and perverse, therefore, the same is liable to set aside for the reasons mentioned below. Hence, notice of this petition is not being issued to the respondents, as the issuance of notice to the respondents will unnecessarily delay the proceedings of the petition filed by respondent No.1 herein. However, if still the respondents feel aggrieved by this order, they will be at liberty move this Court by filing application for modification/recalling of this order. Brief facts leading to filing of this writ petition are that the petitioner herein and respondents No.1 & 2 contested election for the post of Sarpanch of Village Panchayat: Amlideeh and in the said election, the petitioner herein was declared elected, as he obtained	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

मामला क्रमांक ..... W.P. 4398/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 2 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

highest votes among the three candidates. Aggrieved by the said result, respondent No.1 herein filed election petition under Section 122 of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, in the Court of the Specified Officer (Sub Divisional Officer, Korba) on the ground that the post of Sarpanch of Village Panchayat: Amlideeh was reserved for ST category, whereas, the petitioner herein belongs to OBC category, therefore, he was not eligible to contest election for the post of Sarpanch. Notice of the election petition was issued to the petitioner herein and Ram Singh Kanwar, respondent No.2 herein, and they moved an application under Order 7 Rule 11 of the C.P.C. for dismissing the election petition on the ground that the petitioner herein, by caste being Mannewar, falls in the category of ST which has been shown at Sl.No.16 of the Schedule, therefore, the election petition is liable to be dismissed. Learned Specified Officer vide the impugned order dated 12-7-2005 allowed the election petition of respondent No.1 herein and declared the petitioner herein as disqualified to hold the post of Sarpanch. Perusal of the impugned order dated 12.07.2005, prima facie, shows that the same is perverse for the following reasons: -

Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as 'the Rules, 1995'), envisages the procedure to be followed by the Specified Officer, which reads as under: -

> (1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

मामला क्रमांक ..... W.P.4398/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.

(2) The specified officer, shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:-

(a) discovery and inspection;

(b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;

(c) compelling the production of document;

(d) examination of witnesses on oath;

(e) reception of evidence taken on affidavit; and

(f) issuing commission for examination of witnesses and summoning and examining suo moto any person whose evidence, appears to him to be material.

Rule 12 of the Rules, 1995, provides regarding production of witnesses by the parties.

When the allegations levelled by respondent No.1 herein in the election petition were denied by the petitioner herein and respondent No.2 herein, in that situation, learned Specified Officer was required to frame issue on the point where the parties were on variance in the

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4398/ ..... **सन् 2005**

(37)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

pleading and thereafter, ought to have allowed the parties to adduce evidence in support of their claim in order to prove their claim. Whereas, learned Specified Officer without following the procedure as envisaged under Rules 11 & 12 of the Rules, 1995, passed the impugned order dated 12-7-2005 (Annexure P-1) and declared the petitioner herein as disqualified.

Therefore, this order is liable to be set aside. Accordingly, the writ petition is allowed and the impugned order dated 12-7-2005 is quashed. The Specified Officer is directed to proceed with the trial of the election petition, first he has to hear on the application filed by the petitioner herein and respondent No.2 herein under Order 7 Rule 11 of the C.P.C. and if he finds that the application is not maintainable, then he will have to give right to the petitioner herein to file reply of the election petition and thereafter, frame issues on the point where the parties are at variance in their pleadings and then allow the parties to adduce their evidence.

In view of this order, M.(W.)P.No.3576/2005 and I.A. No.7948/2005 stand disposed of.

Before parting with this order, I would like to observe that almost all the petitions filed against the order of the Specified Officer (Sub Divisional Officer) before this Court are being allowed, as in almost every petition the Specified Officers are not following the procedure prescribed under the Rules, 1995, for trial of the election petitions. It seems that either the Officers are totally ignorant of law or they do not want to proceed with the trial of the election petition,

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.4398/ **सन् 2005**

(88)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Soma	in accordance with law, thereby it is sheer wastage of money and time of the general public and also of the Court's time. In such circumstances, it is imperative that the Government should consider the aspect that the trial of election petitions regarding Panchayat Elections and the Municipalities/Municipal Corporation Elections should be entrusted to the Civil Courts, in the larger public interest. Let a copy of this order be sent to the Secretary (Law) and the Secretary (Panchayat), Govt. of Chhattisgarh. Parties are entitled for certified copy of this order. Sd/- L.C. Bhadoo Judge	

21.9.05 / 11.11.05 413